

REMARKS

Status of Claims:

Claims 2, 4-6, 8, and 10-13 were pending in the application. New claims 14-21 are added. Thus, claims 2, 4-6, 8, and 10-21 are presented for examination. A detailed listing of all claims that are in the application, is presented, with appropriately defined status identifiers.

Interview with the Examiner:

Applicant expresses appreciation to the Examiner for the courtesy of the telephone conversation on July 24, 2007. Mr. Justin Sobaje, Attorney for Applicant, called Examiner Fernandez-Rivas to ask him to fax a copy of the IEEE definition of “device” referred to in the Office Action. The Examiner indicated that he would fax a copy of the definition. No other pertinent matters were discussed.

After the telephone conversation, the Examiner faxed a portion of the Seventh Edition of “The Authoritative Dictionary of IEEE Standards Terms” to Mr. Sobaje, which included the entry for “device” referred to in the Office Action.

Claim Rejections Under 35 U.S.C. 101:

Claims 2, 4-6, 8, and 10-13 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

With respect to claims 2, 4-6, 8, and 10-13, the rejection is respectfully traversed.

The Examiner states that, “[t]he claims do not seem to require any hardware to perform their function”, and that, “[a]s such, the claims appear to be a system of software per se and are therefore non-statutory.” (Office Action; page 2). The Examiner further states that, “[c]laim 2 describes an outlier and change point **device** and a first and second learning **device**”, and that, “this device can be considered a software program per se and is therefore non-statutory”. (Office Action; page 3).

However, contrary to the Examiner's assertion, a device **cannot** be considered a software program per se. In an attempt to support the idea that a device can be considered a software program per se, the Examiner cites the definition for "device" in the Seventh Edition of "The Authoritative Dictionary of IEEE Standards Terms", where the 10th entry provided for "device" is as follows:

“(software) A mechanism or piece of equipment designed to serve a purpose or perform a function. (C) 610.10-1994w, 610.12-1990”.

The Examiner appears to believe that the recitation of “(software)” in the above-quoted entry is intended to be part of the IEEE definition for “device”. (Office Action; page 3). However, it is important to understand that the recitation of “(software)” in the above-quoted entry is **not** part of the IEEE definition for “device”. Rather, the recitation of “(software)” in the Dictionary entry is merely intended as a descriptive category associated with the term in earlier editions of the Dictionary, and should be read to mean something like, ‘The following is a definition of device from a Software Engineer’s point of view’.

Attached to this document as Exhibit A is a copy of various portions of “The Authoritative Dictionary of IEEE Standards Terms”. Included in Exhibit A is the section entitled “How to Use This Dictionary”, which explains on page vi that, “Descriptive categories associated with the term in earlier editions of the Dictionary will follow the term in parentheses.”

Also included in Exhibit A is page 504 of the Dictionary, which includes the IEEE definition for “hardware”. The first entry provided in “The Authoritative Dictionary of IEEE Standards Terms” for the term **hardware** is as follows:

“(software) Physical equipment used to process, store, or transmit computer programs or data. *Contrast:* software. (C) 610.12-1990, 610.10-1994w”.

As is evident from the above-quoted entry for **hardware**, the first entry for “hardware” starts with the recitation “(software)” just as with the 10th entry for “device” cited

by the Examiner. Under the Examiner's reasoning, hardware would be defined by the IEEE as software. However, it is evident that the IEEE definition for hardware is not software, because the definition states that hardware is "Physical equipment", which is not software. After the definition, the text even states "*Contrast: software*", which means that hardware has a different meaning than software. This illustrates that the recitation in parenthesis of "**(software)**" before a definition in the "The Authoritative Dictionary of IEEE Standards Terms" does not mean that software is part of the definition of the term, but only means something like, 'The following is a definition from a Software Engineer's point of view'.

Moreover, the 10th entry for device in "The Authoritative Dictionary of IEEE Standards Terms" indicates that the definition in the 10th entry is obtained from the standard "610.12-1990". Attached to this document as Exhibit B is a copy of various portions of the "IEEE Standard Glossary of Software Engineering Terminology" for IEEE Standard 610.12-1990. The Abstract on the first page of Exhibit B states, in part, the following:

“Abstract: IEEE Std 610.12-1990, *IEEE Standard Glossary of Software Engineering Terminology*, identifies terms currently in use in the field of Software Engineering.”

In the "IEEE Standard Glossary of Software Engineering Terminology", the definition of the term "device" is provided as follows:

“device. A mechanism or piece of equipment designed to serve a purpose or perform a function.”

It is important to note that the above-quoted definition of "device" does not recite "**(software)**", and that the above definition is the definition of device that was included as the 10th entry in "The Authoritative Dictionary of IEEE Standards Terms". As is evident from the above-quoted definition of "device" in the "IEEE Standard Glossary of Software Engineering Terminology", a device is not software per se. Rather, according to the Glossary, a device is a **mechanism** or **piece of equipment** designed to serve a purpose or perform a function. A mechanism or piece of equipment definitely encompasses hardware, as the IEEE definition for hardware recites physical equipment.

As a consequence, the IEEE definition for “device” does not support the Examiner’s contention that a device “can be considered a software program per se”. Rather, when it is properly read, the IEEE definition for “device” actually supports the proposition that a device includes hardware.

Therefore, claims 2, 4-6, and 13 are believed to be in compliance with the requirements of 35 U.S.C. 101.

With respect to independent claim 8, the Examiner notes that, “claim 8 describes a method.” (Office Action; page 3). The Examiner then states that, “since there is nothing in the specification that describes any hardware for performing the method, the method can be considered to be software per se and is therefore non-statutory.” (Office Action; page 3).

However, as discussed above, the IEEE definition for “device” does not state that a device is a software program per se, but states that a device is “a mechanism or piece of equipment designed to serve a purpose or perform a function.” It is possible for equipment to be programmed with a computer program, but that does not make the equipment a computer program per se. Thus, there is support in the specification for hardware.

Moreover, independent claim 8 recites a method. One of the statutory categories of 35 U.S.C. 101 is a process. A method is a type of process.

Therefore, independent claim 8 and its dependent claims 10-12 are believed to be in compliance with the requirements of 35 U.S.C. 101.

Conclusion:

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment,

to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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